



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

**ADDITIONAL MATERIALS**

**Item # 7**  
**June 23, 2011**

To: Commissioners  
From: Jonathan Wayne, Executive Director  
Date: June 21, 2011  
Re: Request from Seth Berner Concerning Audit Procedures

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Yesterday, I received a telephone call from 2010 House candidate Seth Berner. He explained his concern that the Commission's audit process might be targeting candidates who were independent (not enrolled in a party) or enrolled in the Green-Independent Party. He reached this conclusion because he (a Green) and Ben Chipman (an independent) were among the 17 candidates mentioned on the June 23 agenda as being audited. He explained that he had mailed a letter expressing his concerns. In the letter (received today), he asks the Commission "to make inquiry into how candidates were chosen to be audited."

In yesterday's telephone call, I explained the audit selection process to him. In late 2010, the Commission's auditor, Vincent Dinan, randomly selected 20% of the 2010 legislative MCEA candidates to be audited. To perform the random selection, he used online software, STATTREK. That process is explained in the attached memo. Our auditor created the memo about two weeks ago because a number of candidates have asked the Commission's Assistant why they were audited as they were hand-delivering the documents requested for the audit.

The selection of Rep. Chipman and Seth Berner for audit was completely random and had nothing to do with their party enrollment. If you would like me to do anything further, please let me know.

# Seth Berner

*Attorney at Law*

*Working to Help People and Society*

RECEIVED

JUN 21 2011

Maine Ethics Commission

June 19, 2011

Jonathan Wayne  
Commission on Governmental Ethics  
135 State House Station  
Augusta, ME 04333

Dear Mr. Wayne:

Late this past Friday afternoon I received the notice of hearing and invitation to participate in the hearing on June 23. I have to be in court so cannot be in Augusta but I do want to submit in writing what I would say were I there in person.


Items 5, 6 and 7 on the Agenda address audits of candidates in 2010. According to the agenda 17 candidates were audited. Joseph Lawson and Michael Wagner are two, I was one and Ben Chipman was one. I do not know who the others are. But this information is enough to set off an alarm bell for me.

Over 300 - closer to 400 - Democratic and Republican candidates ran for offices covered by this Commission in 2010. If you count losers in primary elections the number is over 400. If you count only Clean Elections candidates the number is still well over 200. And yet, of the 17 candidates audited at least one was a member of the Maine Green Independent Party (me) and one was closely identified with that Party though he ran as unenrolled (Ben Chipman). Fewer than ten Green and unenrolled Clean Elections candidates were on ballots in November - less than 5% of the candidates - yet we made up at least 12% of the candidates chosen to be audited.

It is possible that luck-of-the-draw explains this statistical anomaly, but it is also possible that small-party and no-party candidates are being targeted. The former is lawfully permissible; the latter is not.

It is therefore not only appropriate but necessary for the Commission to make inquiry into how candidates were chosen to be audited. I look forward to receiving the Commission's conclusions.

Sincerely,



Seth Berner

**Commission on Governmental Ethics and Election Practices**  
**Audits of Maine Clean Election Act Candidates**  
**Sample Selection Process**

The Commission on Governmental Ethics and Election Practices (Commission) audits the campaign finance reports of all publicly funded gubernatorial candidates and 20 percent of all legislative candidates who were funded under the provisions of the Maine Clean Election Act (MCEA).

Legislative candidates are selected for audit using a process of statistical random sampling. All MCEA-funded legislative candidates are in the “pool” of candidates subject to audit. The procedure is as follows:

Each candidate is assigned a unique number in a block of serial numbers. For sampling purposes, candidates are not identified by name, political affiliation, or legislative district. The audit staff then enters sample selection parameters into a random number generator, which is a software program universally available on the internet. The program used by the Commission staff in 2010 is called STATTREK (<http://www.stattrek.com>). Parameters include total population being sampled and the number of samples to be produced. On command, the program generates a group of numbers in a statistically random fashion (the sample is unique and cannot be replicated). Each number in the group aligns with a number assigned to an individual candidate, and the total sample is equal to 20 percent of all MCEA candidates who competed in the 2010 election cycle.